

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>Errick Shelton,</b>	)	<b>CASE NO. 1:09 CV 00439</b>
	)	
<b>Petitioner,</b>	)	<b>JUDGE PATRICIA A. GAUGHAN</b>
	)	
<b>vs.</b>	)	
	)	
<b>Edward Sheldon, Warden,</b>	)	<b><u>Memorandum of Opinion and Order</u></b>
	)	
<b>Respondent.</b>	)	

This matter is before the Court upon the Report and Recommendation of Magistrate Judge Gallas (Doc. 8) which recommends denial of the Petition for Writ of Habeas Corpus pending before the Court. For the following reasons, the Report and Recommendation is ACCEPTED.

**INTRODUCTION**

Petitioner, Errick Shelton, commenced this action with the filing of a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. The Magistrate Judge has issued his Report and Recommendation recommending that the Petition be denied as procedurally defaulted with respect to petitioner's separation of powers argument and as without merit with respect to the

balance of petitioner's arguments. Petitioner has failed to file objections to the Report and Recommendation.

**STANDARD OF REVIEW**

Rule 8(b) of the Rules Governing Section 2254 Cases in the United States District Courts provides, "The judge must determine *de novo* any proposed finding or recommendation to which objection is made. The judge may accept, reject, or modify any proposed finding or recommendation." When no objections have been filed this Court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. *See* Advisory Committee Notes 1983 Addition to Federal Rule of Civil Procedure 72.

**CONCLUSION**

The Magistrate Judge determined that the petition was procedurally defaulted with respect to his separation of powers argument and that petitioner had not established that the state court decision is contrary to or constituted an unreasonable application of clearly established federal law. Petitioner has not objected to the findings. This Court agrees with the reasoning and conclusions of the Magistrate Judge and, having found no clear error, completely adopts his factual and legal conclusions as its own and incorporates them herein by reference. Accordingly, for the reasons set forth in the Magistrate Judge's Report and Recommendation, the Petition for Writ of Habeas Corpus is denied. Furthermore, the Court declines to issue a certificate of appealability. 28 U.S.C. § 2253(c).

IT IS SO ORDERED.

Dated: 11/23/09

/s/ Patricia A. Gaughan  
PATRICIA A. GAUGHAN  
United States District Judge